

Board Administration and Regulatory Coordination Unit

Division 3. Air Resources Board

Chapter 1. Air Resources Board

Subchapter 8.5 Consumer Products

Article 1. Antiperspirants and Deodorants

§ 94503.5. Innovative Products.

(a) The Executive Officer shall exempt an antiperspirant or deodorant product from the requirements of Section 94502(a) if a manufacturer demonstrates by clear and convincing evidence that, due to some characteristic of the product formulation, design, delivery systems, or other factors, the use of the product will result in less VOC emissions as compared to:

(1) the VOC emissions from a representative antiperspirant or deodorant product which complies with the VOC Standards specified in Sections 94502(a), or

(2) the calculated VOC emissions from a non-complying representative product, if the product had been reformulated to comply with the VOC standards specified in Section 94502(a). VOC emissions shall be calculated using the following equation:

$$E_R = E_{NC} \times \text{VOC}_{STD} \div \text{VOC}_{NC}$$

Where:

E_R = the VOC emissions from the noncomplying representative product, had it been reformulated.

E_{NC} = The VOC emissions from the noncomplying representative product in its current formulation.

VOC_{STD} = The VOC standard specified in 94502(a).

VOC_{NC} = The VOC content of the noncomplying product in its current formulation.

If a manufacturer demonstrates that this equation yields inaccurate results due to some characteristic of the product formulation or other factors, an alternative method which accurately calculates emissions may be used upon approval of the Executive Officer.

(b) For the purposes of this section, “representative antiperspirant or deodorant product” means an antiperspirant or deodorant product which meets all of the following criteria:

(1) the representative product shall be subject to the same VOC limit in Section 94502(a) as the innovative product.

(2) the representative product shall be of the same product form as the innovative product, unless the innovative product uses a new form which does not exist in the product category at the time the application is made.

(3) the representative product shall have at least similar efficacy as other consumer products in the same product category based on tests generally accepted for that product category by the consumer products industry.

(c) A manufacturer shall apply in writing to the Executive Officer for any exemption claimed under subsection (a). The application shall include the supporting documentation that demonstrates the reduction of emissions from the innovative product, including the actual physical test methods used to generate the data and, if necessary, the consumer testing undertaken to document product usage. In addition, the applicant must provide any information necessary to enable the Executive Officer to establish enforceable conditions for granting the exemption including the VOC content for the innovative product and test methods for determining the VOC content. All information submitted by a manufacturer pursuant to this section shall be handled in accordance with the procedures specified in Title 17, California Code of Regulation, Sections 91000-91022.

(d) Within 30 days of receipt of the exemption application the Executive Officer shall determine whether an application is complete as provided in section 60030(a), Title 17, California Code of Regulations.

(e) Within 90 days after an application has been deemed complete, the Executive Officer shall determine whether, under what conditions, and to what extent, an exemption from the requirements of Section 94502(a) will be permitted. The applicant and the Executive Officer may mutually agree to a longer time period for reaching a decision, and additional supporting documentation may be submitted by the applicant before a decision has been reached. The Executive Officer shall notify the applicant of the decision in writing and specify such terms and conditions that are necessary to insure that emissions from the product will meet the emissions reductions specified in subsection (a), and that such emissions reductions can be enforced.

(f) In granting an exemption for a product, the Executive Officer shall establish conditions that are enforceable. These conditions shall include the allowable VOC content of the innovative product, dispensing rates, application rates, and any other parameters determined by the Executive Officer to be necessary. The Executive Officer shall

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also specify the test methods for determining conformance to the conditions established. The test methods shall include criteria for reproducibility, accuracy, and sampling and laboratory procedures.

(g) For any product for which an exemption has been granted pursuant to this section, the manufacturer shall notify the Executive Officer in writing within 30 days of any change in the product formulation or recommended product usage directions, and shall also notify the Executive Officer within 30 days if the manufacturer learns of any information which would alter the emissions estimates submitted to the Executive Officer in support of the exemption application.

(h) If VOC standards are lowered for a product category through any subsequent rulemaking, all innovative product exemptions granted for products in the product category, except as provided in this subsection (h), shall have no force and effect as of the effective date of the modified VOC standard. This subsection (h) shall not apply to those innovative products which have VOC emissions less than the appropriate lowered VOC standard and for which a written notification of the product's emissions status versus the lowered VOC standard has been submitted to and approved by the Executive Officer at least 60 days before the effective date of such standard.

(i) If the Executive Officer believes that an antiperspirant or deodorant product for which an exemption has been granted no longer meets the criteria for an innovative product specified in subsection (a), the Executive Officer may modify or revoke the exemption as necessary to assure that the product will meet these criteria. The Executive Officer shall not modify or revoke an exemption without first affording the applicant an opportunity for a public hearing held in accordance with the procedures specified in Title 17, California Code of Regulations, Division 3, Chapter 1, Subchapter 1, Article 4 (commencing with Section 60040), to determine if the exemption should be modified or revoked.

NOTE: Authority cited: Sections 39600, 39601 and 41712, Health and Safety Code. Reference: Sections 39002, 39600, 40000 and 41712, Health and Safety Code.

REFERENCE